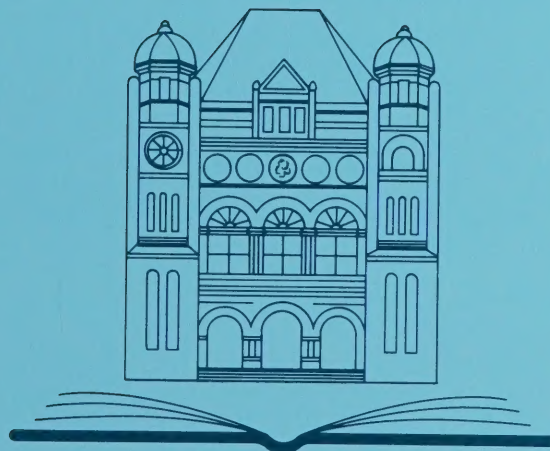


CA20N  
XLII  
-1994  
C153

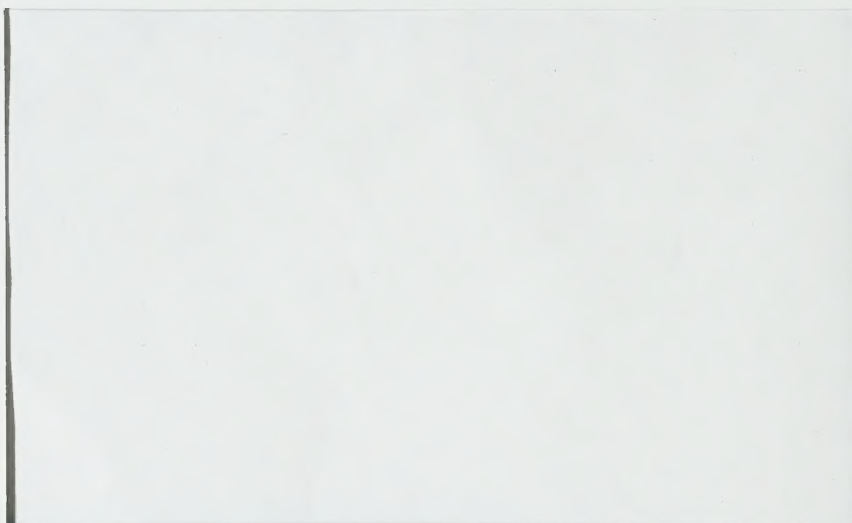
Government  
Publications

**THE OMBUDSMAN: HISTORICAL  
DEVELOPMENT, DIFFERENT MODELS  
AND COMMON PROBLEMS**

*Current Issue Paper 153*



**ONTARIO LEGISLATIVE LIBRARY  
BIBLIOTHÈQUE DE L'ASSEMBLÉE  
LÉGISLATIVE DE L'ONTARIO**



Ontario  
Legislative  
Library



Bibliothèque de  
l'Assemblée législative  
de l'Ontario

Government  
Publications

Legislative Research Service  
Room 2520, Whitney Block  
99 Wellesley Street West  
Toronto, Ontario M7A 1A9

(416) 325-3675  
(416) 325-3637  
(416) 325-3696 Fax

Service de recherches  
Bureau 2520, édifice Whitney  
99, rue Wellesley ouest  
Toronto (Ontario) M7A 1A9

(416) 325-3675  
(416) 325-3637  
téléc. : (416) 325-3696

ISSN 0835-0299

**THE OMBUDSMAN: HISTORICAL  
DEVELOPMENT, DIFFERENT MODELS  
AND COMMON PROBLEMS**

*Current Issue Paper 153*

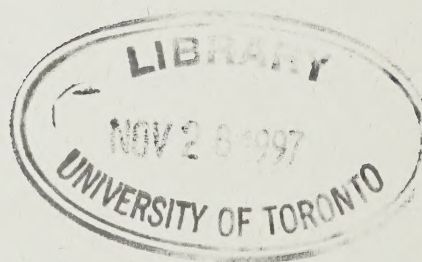
Prepared by:

Paul Murray  
Research Officer  
Legislative Research Service

March 1994


The Legislative Research Service is a branch of the Ontario Legislative Library which provides confidential non-partisan research analysis to Members of all parties of the Legislative Assembly and to legislative committees.





## TABLE OF CONTENTS

	<u>Page No.</u>
INTRODUCTION	1
HISTORICAL DEVELOPMENT	1
The Origin and Spread of the Ombudsman Concept	1
The Spread of the Ombudsman Concept to Ontario and Canada	3
The Ombudsman and the Private Sector	5
VARIATIONS OF THE OMBUDSMAN MODEL	6
Legislative Ombudsmen	6
Variations Among Legislative Ombudsmen	7
The Power to Prosecute	8
Jurisdiction over the Courts	8
Restrictions on Receipt of Complaints	9
A Legislative Petitions	
Committee as an Ombudsman Alternative	10
Legislative and Executive Ombudsmen Compared	10
Specialized Ombudsmen	12
Private Sector Ombudsmen	13
In-house Ombudsmen	13
Industry Ombudsmen	14
COMMON PROBLEMS FACED BY LEGISLATIVE OMBUDSMEN	16
Enforcement of Decisions	17
Awareness and Accessibility	18
Title of Ombudsman	19
Systemic Reviews	21
Gaps in Jurisdiction	22
Lack of Expertise	24
Independence	25
CONCLUSION	27
ENDNOTES	28



Digitized by the Internet Archive  
in 2022 with funding from  
University of Toronto

<https://archive.org/details/31761115501363>



## INTRODUCTION

The twentieth century has seen a tremendous growth in government and its administration. Today, hardly any area of life remains totally immune from government intervention, a situation that increases the potential for individuals to be treated unfairly and for complaints about mistreatment. How are people and governments to respond? Faced with an enormous, incomprehensible government bureaucracy and lacking understanding of their own rights, individuals are likely to be overwhelmed by the prospect of pursuing complaints. Possible avenues for redress, such as the government's internal complaints mechanisms or the courts, may either be mistrusted or be impractical because of cost and delay. What is needed is someone to whom one may turn for assistance, who is easily accessible, who knows the system, who will work quickly and cost little, and who may be trusted to be impartial. At the same time, governments and businesses themselves need effective ways to monitor their own bureaucracies and to ensure that complaints are resolved efficiently. In jurisdictions across the world, the office of ombudsman has been created to fulfil both these needs.

This paper presents an overview of the institution of the ombudsman, tracing its historical development and diffusion from Sweden to jurisdictions around the world, including Ontario and other Canadian provinces. As the institution has spread, it has been adapted to vastly differing political systems. The paper examines some variations in the model and its types, such as legislative, executive, specialized and private sector ombudsmen. Finally, the paper discusses some of the problems often faced by legislative ombudsmen in particular, and explains the steps taken by various jurisdictions to address those problems.

## HISTORICAL DEVELOPMENT

### The Origin and Spread of the Ombudsman Concept

The Ombudsman's function of receiving and investigating complaints about government has been performed for centuries. The Kings of Ancient Egypt had



complaints officers in their courts. In the Roman Republic, two censors were appointed to scrutinize administrative action and receive complaints alleging maladministration. During the Han dynasty in China, the Control Yuan undertook similar activities. Monarchs of the Middle Ages similarly appointed representatives or agents to ensure that public officials obeyed the law and carried out their instructions.<sup>1</sup>

However, unlike their historical counterparts, modern ombudsmen operate independently of government. This enables the ombudsman to be, and to be seen by the public to be, more impartial. The ombudsman in this form dates back only to the 1809 Swedish Constitution which incorporated the *justitieombudsman*, or "ombudsman for justice," who was to supervise public administration. The word "ombudsman" itself is Swedish and refers to one who acts as a representative, agent or any other person authorized to act on someone else's behalf.<sup>2</sup> Outside Sweden, however, the word "ombudsman" primarily refers to variations of the *justitieombudsman*.<sup>3</sup>

The most important innovation of the *justitieombudsman* was that he or she was to be responsible to the legislative branch of government rather than to the executive. This was considered a significant achievement as it followed a century long conflict between Parliament and the executive over control of the office of Chancellor of Justice. This office had been created in 1709 to ensure that Swedish officials followed the law and fulfilled their obligations. In the end, the struggle was resolved by creating Parliament's own ombudsman for justice who was to co-exist with the executive-controlled Chancellor of Justice.<sup>4</sup>

The concept of the ombudsman did not spread beyond Sweden until 1919 when Finland, which had been part of Sweden until being ceded to Russia in 1809, became an independent state and adopted a new constitution which provided for a legislative ombudsman. More than 30 years passed before Norway created a military ombudsman to investigate complaints made by soldiers in 1952. Denmark followed with a general ombudsman in 1953, and West Germany became the first country



outside Scandinavia to adopt the institution, when it established a military ombudsman in 1957.

The 1960s saw a growing awareness beyond Scandinavia of the concept of the ombudsman. This interest was enhanced through a series of seminars and conferences held by the United Nations' Division of Human Rights and the International Commission of Jurists, and a series of conferences on "World Peace Through Law." These discussions grew in part out of a broader movement toward greater citizen protection from the state that followed the second world war, as well as a recognition of the significant growth in government administration.

Spurred by these developments, the ombudsman concept began to spread more rapidly. In the 1960s, thirteen jurisdictions adopted ombudsman plans, including New Zealand (1962), Tanzania (1966) and the United Kingdom (1967). By the 1970s the ombudsman concept had become well established, with over 70 jurisdictions adopting some form of ombudsman plan, including countries such as Australia, Israel, India, Ireland, Austria, France, Fiji, Zambia, Jamaica and the United States.<sup>5</sup>

More countries joined the ombudsman fold during the 1980s, and new offices continue to be opened. In 1983 there were approximately 90 general legislative ombudsman plans in 35 countries.<sup>6</sup> Today, over 50 countries have ombudsman plans of one form or another, and the International Ombudsman Institute directory of Ombudsmen lists over 150 legislative and executive ombudsman offices worldwide.<sup>7</sup>

### **The Spread of the Ombudsman Concept to Ontario and Canada**

Canada was not left behind by these worldwide trends. Discussions about the ombudsman concept intensified in the 1960s, aided in part by the substantial work of Professor Donald Rowat, a Canadian academic and a leading proponent of the adoption of the ombudsman concept in Canada.<sup>8</sup>



Spurred on by these discussions and influenced by the creation of ombudsmen in New Zealand and the United Kingdom, many of the provinces began to consider adopting an ombudsman plan. Alberta and New Brunswick created Canada's first ombudsmen in 1967. They were quickly followed by the appointment of ombudsmen in Quebec (1969), Manitoba (1970), Nova Scotia (1971), Saskatchewan (1973) and Newfoundland (1975). At the federal level, ombudsman-like offices such as the Commissioner for Official Languages (1970) and the Correctional Investigator (1973) were also created during this period.<sup>9</sup>

Ontario was one of the last provinces to adopt an ombudsman plan. Although the concept was first raised in the Ontario legislature in 1962, action was not taken until 1965 when MPP Vernon Singer introduced a private member's bill calling for the appointment of an ombudsman. This bill was not passed, however, and Mr. Singer had to re-introduce it ten times between 1965 and 1974 before the government began, for the first time, seriously to consider supporting the creation of an ombudsman.<sup>10</sup>

By that time two significant developments had occurred. First, as noted above, six other provinces had appointed ombudsmen, and another appointment was pending. Second, the government had in 1971 introduced a series of legislative measures directed toward establishing a code of administrative law procedures to ensure the protection of civil rights within the province.<sup>11</sup> The government regarded the Office of the Ombudsman as a necessary adjunct to this legislation. Consequently, the *Ombudsman Act* was passed and the first Ontario Ombudsman was sworn into office on October 30, 1975.<sup>12</sup> With this appointment and British Columbia's appointment of an ombudsman in 1979, Prince Edward Island was left as the only province without an ombudsman. Newfoundland however has recently abolished the office, leaving that province, too, with no ombudsman.<sup>13</sup>

At the same time as the provinces were adopting their ombudsman plans, there was also considerable discussion about creating a federal ombudsman.<sup>14</sup> However, it was not until 1976 that the federal government appointed a Committee on the Concept of the Ombudsman to consider the idea. The Committee responded with a



recommendation that a federal ombudsman be created.<sup>15</sup> The government accepted the Committee's recommendation and in April 1978 a bill was introduced. However, the bill did not pass before the end of the session, and in 1979 there was a change of government.<sup>16</sup> Subsequent governments have chosen not to reintroduce the bill.

From 1979 to the present, provincial ombudsmen have repeatedly called for the creation of a federal ombudsman, and have been joined by such organizations as the Law Reform Commission of Canada and the Canadian Bar Association.<sup>17</sup> As recently as 1991, a private member's bill was introduced proposing the creation of a federal ombudsman.<sup>18</sup> Despite these developments there remains no federal ombudsman.

### **The Ombudsman and the Private Sector**

The concept of the ombudsman has not been confined to government. Particularly in recent years, an increasing number of plans have been adopted by the private sector, as universities, newspapers, banks, insurance companies and other businesses have appointed ombudsmen to respond to customer complaints. It is difficult to determine precisely how many such ombudsmen exist. An estimate from the mid-eighties placed the number of university ombudsmen in North America at about 150,<sup>19</sup> and the current directory for the Organization of News Ombudsmen lists 51 newspaper ombudsmen.<sup>20</sup> There is also a U.S. association of corporate ombudsman which has approximately 140 members.<sup>21</sup>

Neither in government nor in the private sector does the ombudsman tide appear to have yet reached its height. As one commentator has noted, outside Sweden the ombudsman is a relatively young institution. There remain many countries without ombudsmen, and in those that have them there are still many aspects of government activity beyond the reach of existing ombudsmen.

## VARIATIONS OF THE OMBUDSMAN MODEL

Because reference is often made to different types of ombudsmen, such as legislative, executive, specialized and private sector ombudsmen, some understanding of the function and operation of each is needed to avoid confusion about their different roles and responsibilities. In addition, understanding one model helps in evaluating another.

This part of the paper explains some of the differences among ombudsmen. It sets out the defining characteristics of the legislative ombudsman and provides a description of some variations in the standard legislative ombudsman model. The paper then explains the distinction between legislative and executive ombudsmen, as well as the characteristics and roles of specialized and private sector ombudsmen.

### **Legislative Ombudsmen**

A legislative ombudsman is an independent and nonpartisan officer who monitors the administration of government. Legislative ombudsmen receive specific complaints about administrative unfairness and have broad powers to investigate, to report on, and to make recommendations about, individual cases and administrative procedures. A legislative ombudsman's jurisdiction usually covers a wide range of government bodies and actions. However, the ombudsman is intended to be used as a last resort, that is, after other avenues of appeal have been exhausted. Confidentiality is an important element of the ombudsman's work, and investigations are conducted in private.

The standard against which legislative ombudsmen evaluate administrative action is not usually a legal one, but one of reasonableness or fairness. An ombudsman typically has no power to enforce recommendations or to reverse administrative action, but relies instead on conciliation and persuasion. The authority and the influence of the ombudsman comes from the fact that he or she reports to, and is an officer of, the legislature or parliament.



Although ombudsmen cannot enforce their recommendations, some may publicize instances in which the government administration has refused to implement a recommendation. Others may report such cases to parliament or the legislature, whereupon a legislative committee may examine the case and call on the government to justify its actions.<sup>22</sup>

Legislative ombudsmen may be created at different levels of government; thus a country may have a national, a provincial and a municipal ombudsman, each with jurisdiction at its own level of government. For example, Israel has a national ombudsman and a number of municipal ombudsmen, and Austria and Australia have both federal and regional ombudsmen.

While the above description of legislative ombudsmen describes the work of most legislative ombudsmen, it most closely reflects the ombudsman model as it was adopted by Denmark. The Danish model was subsequently followed by New Zealand, whose ombudsman in turn served as the model for most of the Canadian provinces, including Ontario.<sup>23</sup>

There are legislative ombudsmen who differ in important respects from the model described above. The original Swedish model, in particular, has two distinctive features: the Swedish ombudsman may prosecute officials and the office has jurisdiction over the courts. These functions, which Denmark and many other jurisdictions have chosen not to copy, are discussed below.

### **Variations Among Legislative Ombudsmen**

No two ombudsmen are exactly the same; as one commentator has noted: "The original Swedish conception has proved remarkably flexible and adaptable; it is cloth that seemingly can be cut to any form."<sup>24</sup> Although it would be impossible to identify the distinguishing features of every ombudsman plan, some unique characteristics of particular plans should be noted.

*The Power to Prosecute*

Unlike most ombudsmen, who have the power to make recommendations only, the Swedish and Finnish ombudsmen may prosecute officials who have committed an unlawful act or neglected to perform official duties properly.<sup>25</sup> These ombudsmen may either conduct the prosecution themselves or may order a prosecutor, within whose competence a matter falls, to bring the prosecution.

This function was particularly important in Sweden during the nineteenth century, when many prosecutions were brought. Since that time, the power to bring legal proceedings has been exercised less frequently and then only in the most serious cases. Amendments in 1976 have further limited the circumstances in which the Swedish Ombudsman can bring a prosecution. The authority to prosecute, though circumscribed, remains, providing the Swedish and Finnish ombudsmen a power not found in most ombudsman plans.<sup>26</sup>

*Jurisdiction over the Courts*

Another feature distinguishing the Swedish and Finnish ombudsmen is that they have the authority to supervise courts and judges. These ombudsmen may review complaints about procedural matters, such as the time taken to try a case and render a decision, as well as investigating complaints about the behaviour of judges. In the latter instance the Swedish Ombudsman mostly issues reprimands or criticisms, but he or she also has the power to prosecute a judge for serious misbehaviour. The Swedish and Finnish Ombudsmen do not ordinarily review the content of judicial decisions.<sup>27</sup>

In Austria and Spain, too, ombudsmen have the power to supervise the courts and judges.<sup>28</sup> Ombudsmen in some other countries may monitor the administration of the courts but not the judges. For example, the Ombudsman for Alaska has the power to supervise courts' administration and the actions of court personnel other than judges.



The ombudsman's power to monitor some administrative actions of court staff was recently made explicit in Britain.<sup>29</sup>

In many jurisdictions, including Ontario, responsibility for reviewing judicial behaviour is the office of judicial councils rather than ombudsmen. In comparing the relative merits of judicial councils and ombudsmen performing this role, Professor Rowat argues in favour of ombudsmen:

- ombudsmen are better known and easier to approach;
- ombudsmen are independent of the courts and better trusted to have no bias in favour of judges;
- ombudsmen operate more openly; and
- ombudsmen can criticize and reprimand for minor and unintentional bungling, mistakes and delay, while councils are usually restricted to wilful misconduct and consider only serious cases.<sup>30</sup>

Professor Rowat points out that in practice the Swedish ombudsman receives and remedies far more complaints against the judiciary than do judicial councils.

### *Restrictions on Receipt of Complaints*

Another example of a variation on the legislative ombudsman is found in the British and French models. While most ombudsmen can receive complaints directly from the public, both the British Parliamentary Commissioner and the French *mediateur* may consider only complaints which have been referred to them by a member of Parliament. In these plans, the member is intended to serve as a filter, forwarding only those complaints which require the greater resources and powers of the ombudsman.<sup>31</sup>

Two points should be noted about these ombudsman plans. First, in Britain, where this restriction has been criticized as presenting a barrier to public access to the ombudsman, other ombudsmen (the health services commissioners<sup>32</sup> and the local commissioners for Wales, England and Scotland) may in fact receive complaints

directly from the public.<sup>33</sup> Second, in France a policy has been developed whereby urgent complaints may be dealt with directly by the *mediateur*. This is accomplished by getting the member of the legislature representing the complainant's constituency to certify that he or she has referred the complaint to the *mediateur*. In fact, a large proportion of the complaints the *mediateur* handles fall within this category.<sup>34</sup>

### *A Legislative Petitions Committee as an Ombudsman Alternative*

In Germany, a function similar to that of legislative ombudsmen is performed by the Petitions Committee of the Bundestag and related committees in each state, or *Land*. The existence of the committees is guaranteed by the German Constitution (the "Basic Law"). They are seen as an alternative to the creation of an Ombudsman, and at the federal level the committee consists of 27 members of the Bundestag, with a staff of 55 employees. Like most ombudsmen, the Committee receives, investigates, and recommends action on thousands of complaints a year.<sup>35</sup>

In one *Land*, the Rhineland-Palatinate, both an ombudsman and a petitions committee have been established, and the two work together. Every petition received by the petitions committee is forwarded to the ombudsman, who reviews it as the agent of the committee. The ombudsman may also examine petitions received directly from the public. When the ombudsman is unable to settle a complaint, he or she must submit the petition to the committee for a final decision, along with the ombudsman's own recommendation as to how the matter should be addressed. The committee may either support the ombudsman's recommendation, as it does in the vast majority of cases, or ask the ombudsman to carry out further investigations.<sup>36</sup>

### **Legislative and Executive Ombudsmen Compared**

The critical difference between a legislative and an executive ombudsman is not what they do — both investigate the actions of government — but rather how they are established and to whom they are responsible. Legislative ombudsmen are established either by the constitution or by legislative act, and are responsible to parliament or the



legislature. Executive ombudsmen by contrast are generally established by an action or decision of the executive branch of government (although in some instances they are created by statute) and are responsible to the executive branch.<sup>37</sup>

The consequence of this is that executive ombudsmen are required to review complaints about the very administration with which they are associated, and to whom they are ultimately responsible. For this reason, it is argued, they cannot ensure that a decision has been made in a fair, non-partisan manner, as can a legislative ombudsman. Because independence of this sort is a critical feature of being an ombudsman, Professor Rowat has argued that the phrase "executive ombudsman" is illegitimate.<sup>38</sup>

Despite these concerns, two points should be noted. First, it should be recognized that executive ombudsmen vary in their degree of independence. Some are created solely by executive order and serve at the pleasure of the executive, whereas others are created by statute and are appointed for a fixed term. In the latter instance, both the office itself and the incumbent enjoy a greater degree of protection from the executive. The second point to note is that executive ombudsmen perform a function similar to that of legislative ombudsmen and operate in much the same way. One writer, who examined both legislative and executive ombudsmen, concluded that an executive ombudsman who operates under extensive and explicit procedural and substantive guidelines may have the independence, impartiality and investigative effectiveness characteristic of a traditional ombudsman.<sup>39</sup>

Although most jurisdictions have adopted legislative ombudsman plans, there are, in fact, a large number of executive ombudsmen. In the United States, for example, where there has been considerable enthusiasm for the ombudsman concept, most states have opted for an executive ombudsman, with only four states having adopted the traditional legislative ombudsman plan.<sup>40</sup> Other jurisdictions with executive ombudsmen include the Philippines, Taiwan and the cities of Paris and Berlin<sup>41</sup>.

## Specialized Ombudsmen

Whereas most legislative and executive ombudsmen receive complaints concerning a wide range of government agencies and activities, there are a number of "specialized" ombudsmen, who have responsibility for a particular agency or activity.

Specialized ombudsmen vary greatly in their jurisdictions, powers and manner of operation. Areas of specialization include health services, the military, correctional services, languages, children, legal services, consumers, equal opportunity and ethnic discrimination. Specialized ombudsmen may be created along the lines of either legislative or executive ombudsmen. For example, in Israel<sup>42</sup> and Germany<sup>43</sup> the military ombudsmen who receive and investigate complaints from soldiers and their families report directly to Parliament, as do the Health Services Commissioners in Great Britain<sup>44</sup> and the Commissioner for Official Languages in Canada.<sup>45</sup>

Other specialized ombudsmen are less closely linked with parliament or the legislature. For example, the Correctional Investigator for Canada, who investigates complaints in relation to the administration of correctional services, reports ultimately to the Solicitor General, and not to Parliament.<sup>46</sup> The Norwegian Ombudsman for Children also reports to a government ministry, but has the additional option of contacting the press directly when circumstances warrant.<sup>47</sup>

As is the case with legislative ombudsmen, specialized ombudsmen differ in their enforcement powers. While most have powers of recommendation only, the Swedish Equal Opportunities Ombudsman may initiate litigation before the Labour Court if he or she believes that a judgment would constitute a valuable precedent.<sup>48</sup> At the other extreme, the Swedish Ombudsman against Ethnic Discrimination not only has no prosecutory role, but is directed only to provide support and advice to individuals and organizations, and to take only general measures to counteract discrimination. The Ombudsman may also propose amendments of the law and take similar action to improve ethnic justice in society.<sup>49</sup>



Finally, another feature of note that distinguishes specialized ombudsmen from legislative ombudsman is that the former's jurisdiction sometimes extends beyond the public sector, to encompass complaints against private sector entities. This is the case, for example, with the Swedish specialized ombudsmen discussed above and the Norwegian Ombudsman for Children. In this respect, these ombudsmen constitute a sort of hybrid, in terms of jurisdiction, between legislative and private sector ombudsmen.

### **Private Sector Ombudsmen**

In addition to legislative and executive ombudsmen, who focus on complaints against government administration, there are many "ombudsmen" whose job is mainly to examine complaints against private sector groups. In this regard, it has been noted that the term "ombudsman" is now used loosely to refer to "any officer or office of any organization that receives public complaints about the way it conducts its business or how others conduct their business."<sup>50</sup> Thus universities, newspapers, banks, businesses and others promote their own ombudsmen to address public complaints.

Private sector ombudsmen schemes are generally voluntary and take two forms. In one model the ombudsman is created by a company or institution to examine complaints about the company. In another model a specific industry, for example the banking industry, sets up a joint scheme for the appointment of a single ombudsman for the entire industry. These two types of ombudsmen are referred to here as in-house and industry ombudsmen.

#### *In-house Ombudsmen*

The two most common in-house ombudsmen are probably university and newspaper ombudsmen. University ombudsmen examine complaints having to do with the administration of the university bureaucracy. One problem with such ombudsman plans is that the appointee may become either too closely associated with the university administration or too much the student advocate. To forestall this event

some universities appoint their ombudsman by a joint committee of the university administration and the students.<sup>51</sup>

Newspaper, media or press ombudsman are of two different types. An internal ombudsman is hired or assigned by a newspaper to investigate complaints from the public and take steps to remedy the situation. Complaints usually relate to inaccuracy, unfairness or insensitivity in reporting. To ensure greater independence, one American newspaper hires a journalist from outside the newspaper to serve a two-year term. The contract is made non-renewable, to ensure that the ombudsman is not inclined to favour management.<sup>52</sup> In Canada, at least five daily newspapers and the Canadian Broadcasting Corporation have internal ombudsmen.<sup>53</sup>

The other type of newspaper ombudsman has a broader role. He or she operates an "Action Line" column, receiving and settling complaints from the public and then publishing the most interesting cases in the column. As one commentator has noted, some of these ombudsmen receive large numbers of complaints which are addressed without ever appearing in the newspaper.<sup>54</sup>

Many other businesses have also begun to enlist the services of ombudsmen. In the United States, an association of corporate ombudsmen, the Ombudsman Association, has approximately 140 members.<sup>55</sup> In Canada, major companies such as the Bank of Nova Scotia and MacMillan Bloedel use ombudsmen to handle employee complaints and improve management. MacMillan Bloedel, for example, has hired an outside employment lawyer who receives and examines complaints on a confidential basis, and bills the company for her time.<sup>56</sup>

### *Industry Ombudsmen*

Most recently, ombudsman plans have been adopted by industries such as banking, insurance, telecommunications, legal services and building societies.



The United Kingdom has led the way in developing this model, and now has banking, insurance and building societies industry ombudsmen. While all three are similar in structure, the banking and insurance schemes were created voluntarily by industry participants, whereas an ombudsman scheme was imposed on the building societies by statute.<sup>57</sup> The United Kingdom has also created a Legal Services Ombudsman to review complaints about lawyers and about the way in which the Solicitor's Complaints Bureau, the profession's self-regulating body, reviews such complaints.<sup>58</sup>

Australia<sup>59</sup> and New Zealand<sup>60</sup> have also created banking ombudsmen along the lines of the U.K. model. As well, an ombudsman scheme for the telecommunications industry was to be in place in Australia by January 1993,<sup>61</sup> and there are plans in New Zealand for an insurance ombudsman scheme.<sup>62</sup>

The United Kingdom banking ombudsman furnishes a good example of how industry ombudsmen are set up and operated. The Office of the Banking Ombudsman is a private, unlimited company comprised of three bodies: the Board, which is composed of banking representatives; the Council, composed of a mix of banking and independent representatives, with the latter in the majority; and the Banking Ombudsman. The Board is responsible for funding, final approval of the ombudsman's appointment and changes to the terms of reference. The Council acts as a buffer between the Board and the Banking Ombudsman, supervising the ombudsman in relation to the terms of reference, the budget and the annual report.

The Banking Ombudsman receives and investigates complaints about banking services. Most U.K. banks participate in the scheme. Complainants must first have tried the bank's in-house grievance resolution procedures. The Banking Ombudsman has extensive investigatory authority, including the power to require a bank to release all documents related to a complaint. While the Banking Ombudsman's objective is to obtain a fair settlement of a complaint, he or she does have the capacity to make an award binding on the bank. However, in the first five years of the office no such awards were made.<sup>63</sup>

The industry ombudsmen schemes so far introduced are substantially alike. However, some interesting variations on the concept have developed. For example, the Building Societies Ombudsman in the United Kingdom has a more limited power of enforcement than has its banking counterpart. In cases where the Building Societies Ombudsman proposes to make a binding order against a building society, the society has the choice either of complying with the order or of publishing the Ombudsman's decision, together with the society's reasons for noncompliance.<sup>64</sup> Another variation on the scheme described above is that under the Australian banking ombudsman scheme the Council, rather than the Board, is given sole authority for appointing the Banking Ombudsman. This strengthens the Australian banking ombudsman's independence.<sup>65</sup>

### **COMMON PROBLEMS FACED BY LEGISLATIVE OMBUDSMEN**

The Ombudsman concept has spread rapidly, but questions remain as to how well it functions and how it can work most effectively. This part of the paper examines some common problems faced by legislative ombudsmen and notes steps taken, or proposed, in some jurisdictions to address them. While the focus here is on the problems as they are encountered by legislative ombudsmen, problems of a similar nature beset ombudsmen in all contexts.

Concerns most often raised and which are examined here relate to the following:

- inability to enforce decisions;
- lack of public awareness of the office and problems of accessibility;
- the appropriate role with respect to systemic problems;
- the use of the term "ombudsman";
- gaps in jurisdiction;
- lack of expertise in areas examined; and
- independence, particularly with respect to resources and appointment.



## Enforcement of Decisions

One criticism that is sometimes made is that ombudsmen do not have the power to enforce their recommendations. The lack of authority, it is argued, means that government agencies can ignore an ombudsman's recommendations, with the result that the costs of investigation are wasted, and the citizen is left frustrated and without a remedy.

A number of points have been made in response to this criticism. First, it is argued that for the ombudsman to make an enforceable order against the executive would be inappropriate. Because the executive branch of government should be accountable to the legislature and since only the legislature is accountable to the people, it would be more appropriate for the ombudsman to report the government's actions to the legislature, and for that body to take whatever steps are necessary.<sup>66</sup> Furthermore, a power of enforcement would be inconsistent with the ombudsman's role as an impartial investigator and conciliator. The performance of this role, it is argued, depends on the ombudsman's developing a positive relationship with the administration.<sup>67</sup> This could be harmed through an enforcement power.

A third point is that in practice there are very few cases in which an enforcement power would be in fact required. It is pointed out that most of the time the ability of the ombudsman to publicize the government's refusal to implement a recommendation and to report to the legislature puts sufficient pressure on the administration to comply.

One area requiring improvement, according to some ombudsmen, is the need to ensure that their reports are in fact reviewed by the legislature. This requires the creation of a process through which the legislature can examine the report.<sup>68</sup> An example of such a process exists in Ontario where ombudsmen reports are automatically referred to the Standing Committee on the Ombudsman. For many years, Ontario and Great Britain were two of only a handful of jurisdictions in which ombudsmen reports were regularly examined by a legislative committee. In both

cases the process has proven extremely successful in ensuring that the administration responds to the ombudsman's recommendations.<sup>69</sup> More recently, New Brunswick<sup>70</sup> and New Zealand<sup>71</sup> have created committees to perform a similar function, and other jurisdictions have recommended their creation.<sup>72</sup>

### **Awareness and Accessibility**

Two related problems that ombudsmen face are the public's lack of awareness of their services and barriers to accessing those services. A 1991 survey conducted by the Ontario Ombudsman showed that although 69% of people were aware of the Ombudsman and had a generally accurate perception of the Ombudsman's jurisdiction and mandate, as compared with similar public agencies this figure was low. For example, 95% of people were aware of the Ontario Human Rights Commission and 97% were aware of the Worker's Compensation Board.<sup>73</sup> The survey also concluded that the "most vulnerable"<sup>74</sup> were the least likely to be aware of the Ombudsman's services. This finding is particularly significant because the "most vulnerable" have both a higher proportion of complaints<sup>75</sup> and, being less wealthy, have fewer means available to enforce their rights.

This situation exists despite ongoing efforts by successive Ontario Ombudsmen to publicize their function and to reach out to those communities and segments of the population who are least likely to be aware of their services. The problem is not unique to Ontario. Recent reports in Quebec<sup>76</sup> and Australia<sup>77</sup> noted similar problems and recommended various courses of action, including increasing publicity efforts targeting low-income and disadvantaged groups, and requiring or encouraging government departments to make information available concerning the ombudsman's services at all public contact points. Similar recommendations were made by Ontario's Standing Committee on the Ombudsman in its recent *Review of the Office of the Ombudsman*.<sup>78</sup>

Closely related to the problem of public awareness is the issue of accessibility. There is, for example, usually only one ombudsman appointed to serve a large area. To

compensate, many ombudsmen travel regularly to smaller communities to promote their office and to contact complainants directly.<sup>79</sup> Other techniques used include, permitting collect telephone calls from complainants (Australia), the creation of district or local offices (Ontario), and the use of "delegates" in local areas, who act on the ombudsman's behalf (France).<sup>80</sup>

Some jurisdictions require that complaints to the ombudsman must be made in writing. If strictly enforced, this requirement could make access difficult for those with poor literacy skills. Accordingly, many provinces also accept complaints by telephone or through a personal interview, and then commit the complaint to writing on the individual's behalf. In New Zealand, recent legislative amendments have now removed the requirement that complaints be made in writing. Complaints may be made either orally or in writing and if a complaint is made orally then it must be put in writing as soon as practicable.<sup>81</sup>

### **Title of Ombudsman**

Two problems arise in relation to the title "ombudsman". One is its use by offices which do not possess all of the elements critical to the traditional concept of an ombudsman, most notably, independence. Some ombudsmen fear this could cause confusion about the role of traditional ombudsmen, thereby damaging the institution as a whole.

One possible solution would be to restrict the use of the term "ombudsman". However, possible benefits that may be derived from a broader use of the term must be considered. Since public awareness is a key to the success of a public institution like the ombudsman, wider use of the title could heighten public awareness of all ombudsman institutions. Indeed, as has been noted, in Sweden "ombudsman" is a common, generic term which does not refer simply to legislative ombudsmen. Confusion over the roles of different ombudsmen is avoided by giving particular ombudsmen descriptive titles, so that for example the ombudsman for parliament is known as the *Justitieombudsman*.



In light of the above, what seems to be needed is continued growth in the use of the term, but with appropriate controls. One jurisdiction attempting such an approach is New Zealand. In 1991, the New Zealand ombudsmen legislation was amended to provide that no person may use the term "ombudsman" unless authorized by legislation or by the Chief Ombudsman.<sup>82</sup> The New Zealand Ombudsman has since established criteria by which to consider applications for the use of the term. As a general rule, the New Zealand Ombudsman will approve the use of the name "ombudsman" only if the model proposed is independent, accessible, fair and effective. The criteria specifically include that:

- appointment and funding should ensure effectiveness and independence;
- the person's role should be to receive complaints and to impartially investigate them;
- the term "ombudsman" should be used in conjunction with a description which makes the role clear, e.g., "Banking Ombudsman"; and
- an annual report should be made publicly available.<sup>83</sup>

The criteria were used for the first time in authorizing the use of the term "Banking Ombudsman" in relation to a scheme along the lines of the U.K. Banking Ombudsman discussed earlier.<sup>84</sup>

Two other jurisdictions have also considered restricting the use of the term "ombudsman." In Quebec, the Committee on Institutions' 1991 report proposed that the terms "public protector" and "ombudsman" be used only with the approval of the Public Protector.<sup>85</sup> In Australia, the federal Ombudsman noted in his 1991-92 Annual Report that there had recently been discussions about creating ombudsmen in the areas of telecommunications, superannuation, the legal profession, and the petroleum industry. While he made a plea for voluntary restraint, he also noted that it may be necessary in the future to ask for legislative amendments similar to those in New Zealand.<sup>86</sup>

Another criticism often levelled is that the word "ombudsman" has a sexist connotation. Although in Swedish the term is inclusive of both men and women, for

the majority of the people who encounter the word, "man" implies a male-only domain in much the same way that a term such as "chairman" does.

A number of jurisdictions have attempted to address this problem. In the Netherlands, the *Ombudsman Act* expressly provides that if a woman is appointed ombudsman then she shall be known as the National Ombudswoman.<sup>87</sup> In Quebec, a recent review of the Public Protector concluded that the French term "Protecteur du citoyen" should be replaced by "Protecteur des citoyens et des citoyennes," and that where a woman is appointed to the position the feminine form of the word "Protecteur" may be used.<sup>88</sup>

Other jurisdictions, however, have decided against changing the term.<sup>89</sup> One argument is that alternatives such as "ombudswoman" and "ombudsperson" are not themselves Swedish words and therefore do not share the original Swedish meaning of the term "ombudsman." Another argument is that public awareness of ombudsman offices would be reduced if the name was changed.<sup>90</sup>

These arguments were noted in Ontario's Standing Committee on the Ombudsman's recent report, *Review of the Office of the Ombudsman*, which decided against changing the title of ombudsman. In its report, the Committee noted that it was concerned about the sexist connotation of the term "ombudsman" and wished to find a replacement term. The Committee specified that the term be gender-neutral, describe accurately the office's functions and, as the Ontario Ombudsman had suggested, be easy to understand and pronounce.<sup>91</sup> Although the Committee considered a number of possibilities, including Public Complaints' Commissioner, Parliamentary Commissioner for Administration, Public Protector, and Public Mediator, it concluded that none provided a satisfactory alternative to ombudsman.<sup>92</sup>

## Systemic Reviews

Ombudsmen must try to strike a balance between the investigation of individual complaints and the investigation of complaints of a "systemic" nature. A systemic

problem is a pervasive or underlying unfairness in the practices, laws or administration of a governmental organization. Systemic reviews are usually undertaken when the ombudsman has received a series of similar complaints which suggest such a problem.

Some ombudsmen argue that more of their efforts should be directed toward systemic problems, since administrative unfairness is likely to be repeated where such problems exist.<sup>93</sup> As well, since ombudsmen are examining matters of administrative unfairness daily, it is argued that they are particularly qualified to review and propose improvements in administrative procedures. Other ombudsmen raise concerns about the cost of such investigations. Given the expense involved and a scarcity of resources, they argue, ombudsmen must make a choice between systemic investigations and individual complaints. In this dilemma, it is argued, they must favour the investigation of individual complaints since this is the primary purpose for which the ombudsman was created.<sup>94</sup>

The Ontario Ombudsman has traditionally achieved an effective balance between systemic and individual investigations. From time to time the Ombudsman has undertaken broader, systemic investigations — the most recent example being the examination of the problem of delay at the Ontario Human Rights Commission.<sup>95</sup> However, such investigations have generally followed a substantial number of similar complaints, and the Ontario Ombudsman's primary role has continued to be the investigation of individual complaints.<sup>96</sup>

### **Gaps in Jurisdiction**

The nature and significance of the problem of gaps in jurisdiction varies from ombudsman to ombudsman. In Ontario there are two distinct problems: the lack of a federal ombudsman and anomalies in the provincial agencies covered.

Because there is no federal ombudsman, the Ontario and other provincial ombudsmen frequently receive complaints concerning matters under federal jurisdiction, such as



Unemployment Insurance, Canada Pension Plan, income tax, health matters, and Aboriginal issues.<sup>97</sup> Since these matters are outside the Ombudsman's mandate, the Ombudsman can at most make inquiries on the individual's behalf or informally facilitate a resolution of the complaint.

Other federations such as Australia, Germany and Austria have ombudsmen at both the federal and provincial levels.<sup>98</sup> As noted earlier, the Canadian federal government has considered the possibility of creating a federal ombudsman and a committee appointed to consider this option recommended its establishment.<sup>99</sup> However, these recommendations have never been acted upon. Nonetheless, a number of provincial ombudsmen, including the present Ontario Ombudsman, continue to press for the creation of a federal ombudsman.<sup>100</sup>

Anomalies in provincial jurisdiction also result in complaints being received which the ombudsman cannot formally investigate. In Ontario, for example, complaints concerning municipalities, school boards, Children's Aid Societies, public hospitals and the Ontario New Home Warranty Program fall outside the Ombudsman's jurisdiction. Successive Ontario Ombudsmen have proposed a widening of jurisdiction to include a number of these agencies, arguing that the ombudsman's services should be available with respect to administrative unfairness in the operation of any provincially created and funded body.<sup>101</sup>

In its 1989 report, *Expansion of the Jurisdiction of the Office of the Ombudsman*, the Standing Committee on the Ombudsman considered expansion into the areas of Children's Aid Societies, public hospitals and the Ontario New Home Warranty Program. The Committee recommended against expansion for a number of reasons, among them, that expansion would require the hiring of substantial staff and that it would require increased resources.<sup>102</sup> More recently, the Committee, in its report entitled *Review of the Office of the Ombudsman*, again decided against expansion, suggesting that other options such as improving the manner in which complaints are dealt with at the local level be explored first.<sup>103</sup>

## **Lack of Expertise**

Because the ombudsman has such a broad jurisdiction, he or she is called on to review the actions and decisions of a wide range of specialized administrative agencies. In doing so, it is sometimes questioned whether it is possible for an ombudsman to achieve a level of understanding sufficient to enable him or her to judge fairly the decisions or actions of such agencies. This concern is raised particularly in the context of the decisions of administrative tribunals.

It is argued in response to these concerns that the ombudsman is an expert in administrative fairness and can therefore effectively judge matters of procedural fairness in varied settings. Moreover, while it is acknowledged that the ombudsman's role should not be to second-guess the decisions of such a tribunal, the power to review the merits of a decision can serve as an important check against decisions which are clearly unreasonable. In its recent report, the Standing Committee on the Ombudsman supported the continuation of the Ontario Ombudsman's role in reviewing the merits of tribunal decisions.<sup>104</sup>

Concerns about expertise go beyond administrative tribunals to all government activities. One suggestion which is made is that, where it is workable, the creation of a specialized ombudsman should be considered. As discussed earlier, some typical areas of specialization are corrections, health and the military. The idea is that by focusing on one agency or activity a specialized ombudsman is able to acquire the expertise necessary to assess that agency's actions and decisions effectively. However, such specialization brings its own set of problems. Numerous specialized ombudsmen can be expensive, create different standards of service, and complicate public access to each of the offices.<sup>105</sup>

One alternative approach to a proliferation of ombudsman offices is to create specialized units within one office which can then develop expertise in specific areas. The Office of the Ontario Ombudsman, for example, historically has taken this

approach, establishing specialized units in the areas of workers' compensation and corrections.<sup>106</sup>

## **Independence**

As noted earlier, one of the hallmarks of the ombudsman is his or her independence from the executive branch of government. The essence of such independence is that ombudsmen should be able to investigate government action and make decisions without being unduly concerned about possible repercussions against themselves or their office.

Independence depends on a number of factors. Direct interference with an investigation would be the clearest case of a threat to independence; however, this seldom, if ever, occurs. Rather, concerns about independence tend to focus on matters such as the government's control of resources through the budget approval process, involvement in the appointment and reappointment of ombudsmen, oversight of the ombudsman's operations, and the length of the ombudsman's term of office. While most jurisdictions make the ombudsman responsible to parliament or the legislature, differences exist in terms of the government's involvement in these matters.

When the government controls the ombudsman's budget, an obvious concern arises that, if the ombudsman is too outspoken on a sensitive investigation, government might cut resources. For this reason, the preferred approach, from the perspective of ombudsmen, is to have the legislature make resource decisions. This is done, for example, in New Zealand<sup>107</sup> and Alberta<sup>108</sup> where legislative committees are given responsibility for receiving and approving the ombudsman's budget. This approach has also been proposed in Quebec,<sup>109</sup> Saskatchewan<sup>110</sup> and Victoria (Australia),<sup>111</sup> where at present the ombudsman's budget is subject to approval by the executive. In Ontario, the ombudsman's budget is approved by the Board of Internal Economy, which is a body of the Legislature, but whose membership is dominated by the government and includes three Ministers of the Crown.<sup>112</sup> In



order to ensure greater independence, Ontario's Standing Committee on the Ombudsman recently recommended that responsibility for approval of the budget be assigned to it, along the lines of Alberta and New Zealand.

Government involvement in the appointment and reappointment process can create the impression that an ombudsman is tied to government and, in the case of a reappointment, inhibit the actions of an ombudsman who may seek another term. A common approach, the one used in Ontario, is for the government to choose a candidate which it then presents to the Assembly for approval. The problem with this is that it enables the government to screen candidates, so that, in the case of a reappointment, it can choose not to put forward the name of the outgoing ombudsman as occurred recently in New Zealand.<sup>113</sup> It might be preferable to involve a legislative committee in both the selection and appointment of candidates. For example, in Alberta, British Columbia and Manitoba, a legislative committee selects a candidate which it then puts forward to the Assembly for ratification or a vote. In New South Wales, Australia, recent legislative amendments have given its Joint Committee on the Office of the Ombudsman the power to veto any proposed appointment.<sup>114</sup>

Most ombudsmen are operationally independent of both the government and the legislature, although the assembly in many instances has the power to remove an ombudsman for cause. One matter of concern which has arisen in the past in Ontario is the extent to which the Standing Committee on the Ombudsman should inquire into matters concerning the Ombudsman's operations. In its recent report, the Committee recognized that its role was not to direct the ombudsman on how a particular situation should be addressed or on what policies should be adopted. However, the Committee concluded that it should have the power to inquire into any matter which might impact in a fundamental way on the manner in which services are provided, and that the ombudsman had a responsibility to respond to criticisms and to explain his or her actions.<sup>115</sup>

Each of the above aspects of independence should be considered in light of an ombudsman's term of appointment. Where the term is short — less than a government's term of office — government pressure can inhibit the ombudsman in his or her work. A longer term of office provides a security of tenure which can, to some extent, insulate an ombudsman from such pressures. In fact, the majority of ombudsmen have terms of office of either five or six years,<sup>116</sup> which in most instances is longer than a government's term of office. In Ontario, the ombudsman's term of office is ten years.<sup>117</sup>

## CONCLUSION

Although the first ombudsman was created in Sweden in 1809, the institution has spread to other countries only over the past forty years. In most other countries, therefore, the ombudsman is a relatively new institution, and should be seen in part as a response to the rise of the administrative state and the increasing impact government has on our daily lives.

The spread of the ombudsman to other countries has necessitated the redesign and adaptation of the Swedish model to fit a wide range of political contexts. While it appears that such attempts have for the most part proved effective, the ombudsman concept will continue to evolve as ombudsmen attempt to establish their unique role among other public institutions.

As with any major public institution, the ombudsman must struggle against both old and new problems in fulfilling its role. Some of these may be simply a part of the adjustment and growth of the ombudsman concept, such as the lack of public awareness and gaps in jurisdiction. Others, however, such as achieving an appropriate level of independence and ensuring respect for the ombudsman's decisions, may prove to be more ongoing and intractable.

## ENDNOTES

- <sup>1</sup> G.E. Caiden et al., "The Institution of Ombudsman," in *International Handbook of the Ombudsman: Evolution and Present Function*, Vol. 1, ed. G.E. Caiden (Westport: Greenwood Press, 1983), p. 9.
- <sup>2</sup> I. al-Wahab, *The Swedish Institution of Ombudsman* (Stockholm: Liberforlag, 1979), p. 19.
- <sup>3</sup> D.C. Rowat, *The Ombudsman Plan: The Worldwide Spread of an Idea*, 2nd ed. (Lanham: University Press of America, 1985), p. 3.
- <sup>4</sup> al-Wahab, *Swedish Institution*, pp. 23-27.
- <sup>5</sup> Caiden, "The Institution of Ombudsman," pp. 9-12 and al-Wahab, *Swedish Institution*, pp. 136-151.
- <sup>6</sup> D.C. Rowat, "Reflections on the Ombudsman Concept," in Nova Scotia, Ombudsman, *Annual Report, 1990*, Appendix B, p. 29.
- <sup>7</sup> The International Ombudsman Institute, *Directory of Ombudsmen and International Ombudsmen Offices* (Edmonton: International Ombudsman Institute, revised to May 1993).
- <sup>8</sup> U. Lundvik, *The Ombudsmen in the Provinces of Canada* (Stockholm: International Ombudsman Institute, 1981), pp. 6-7.
- <sup>9</sup> Ibid., pp. 6-23.
- <sup>10</sup> D. Morand, Q.C., "Ontario," in *International Handbook*, Vol. 2, pp. 63-64.
- <sup>11</sup> See: *Judicial Review Procedure Act*, R.S.O. 1990, c. J-1 and *Statutory Powers and Procedures Act*, R.S.O. 1990, c. S-22.
- <sup>12</sup> Morand, "Ontario," pp. 63-64.
- <sup>13</sup> Newfoundland abolished its ombudsman office in 1990.
- <sup>14</sup> H.J. Llambias, "Canada: Introduction," in *International Handbook*, Vol. 2, pp. 27-28.
- <sup>15</sup> Government of Canada, *Report of the Committee on the Concept of the Ombudsman* (Ottawa: The Committee, 1977), p. 18.
- <sup>16</sup> Llambias, "Canada," p. 28.
- <sup>17</sup> S. Owen, "Proposal for a Canadian Federal Ombudsman Office," *Ombudsman Journal* (Vol. 10, 1992): 6, note 4.



<sup>18</sup> Bill C-278, *An Act establishing the office of the Ombudsman and amending Acts in consequence thereof*, 3rd Session, 34th Parl. Can. 40 Elizabeth II, 1991 (first reading, 20 September 1991).

<sup>19</sup> Rowat, *The Ombudsman Plan*, p. 134.

<sup>20</sup> Organization of News Ombudsmen, *Editors for the Public: What are News Ombudsmen and Why Should the Media Have Them?* (July 1993).

<sup>21</sup> M. Zetlin, "A Neutral Third Party," *Management Review* (September 1992): 50.

<sup>22</sup> See generally, Caiden, "The Institution of Ombudsman," pp. 13-15 and in particular the 1974 International Bar Association definition on p. 12 of that article.

<sup>23</sup> Lundvik, *The Ombudsmen in the Provinces of Canada*, p. 5.

<sup>24</sup> Caiden, "The Institution of Ombudsman," p. 13.

<sup>25</sup> See: al-Wahab, Swedish Institution, pp. 57-60, and J.S. Aalto, "Finland," in *International Handbook*, Vol. 2, pp. 98-99.

<sup>26</sup> al-Wahab, *Swedish Institution*, pp. 57-60.

<sup>27</sup> *Ibid.*, pp. 70-76 and Aalto, "Finland," pp. 94-95..

<sup>28</sup> D. Rowat, "The Ombudsman Should Supervise the Courts," *Policy Options* (July/August 1992): 7-8.

<sup>29</sup> *Ibid.*, pp. 8-10.

<sup>30</sup> *Ibid.*, p. 9.

<sup>31</sup> K.P. Poole, "United Kingdom," in *International Handbook*, Vol. 2, and D. Rowat, "The Ombudsman in France," *Canadian Public Administration* 27:1 (1984): 69.

<sup>32</sup> The Parliamentary Commissioner also serves as the Health Services Commissioner.

<sup>33</sup> Poole, "United Kingdom," pp. 190-91.

<sup>34</sup> Rowat, "Reflections on the Ombudsman Concept," p. 26.

<sup>35</sup> B. Becker et al., "Federal Republic of Germany," in *International Handbook*, Vol. 2, pp. 82-83.

<sup>36</sup> *Ibid.*, pp. 87-89.

<sup>37</sup> Compare the definitions of "executive ombudsman" in International Ombudsman Institute, *Ombudsman Office Profiles 1988* (Edmonton: International Ombudsman Institute, 1988), p. ii, and International Ombudsman Institute, *Ombudsman and Other*

*Complaint-Handling Systems Survey 16-18* (Edmonton: International Ombudsman Institute, 1986), p. 21, as cited in I. Weiss, "Comparing Legislative and Executive Ombudsman in the United States, *Ombudsman Journal* 7 (1988): 39.

<sup>38</sup> D. Rowat, "Why a Legislative Ombudsman?," unpublished, 6 October 1992, revision of a paper presented at the annual convention of the United States Association of Ombudsmen, Portland, Maine, 28 May 1992, p. 5.

<sup>39</sup> Weiss, "Comparing Legislative and Executive Ombudsman in the United States," p. 51.

<sup>40</sup> *Ibid.*, p. 39.

<sup>41</sup> The International Ombudsman Institute, *Ombudsman Office Profiles 1988*, pp. 93, 176, 195, and R.W. Taylor, "Ombudsman Success in the Federal Republic of Germany: The Role of Specialized and General Ombudsmen in a Large Federation," *Ombudsman Journal* 4 (1984-85): 184-85.

<sup>42</sup> H. Laskov, "The Military Ombudsman in Israel," in *International Handbook*, Vol. 2, Chapter 10.

<sup>43</sup> Karl-Wilhelm Berkhan, *The Defense Commissioner of the Bundestag of the Federal Republic of Germany*, International Ombudsman Institute, Occasional Paper #18, August 1982.

<sup>44</sup> Poole, "United Kingdom," p. 194.

<sup>45</sup> R. Skuce, "The Commissioner of Official Languages," in *International Handbook*, Vol. 1, p. 36.

<sup>46</sup> *Corrections and Conditional Release Act*, S.C. 1992, c. 20, s. 180.

<sup>47</sup> M.G. Flekkoy, *A Voice for Children: Speaking Out as Their Ombudsman* (London: Jessica Kingsley Publishers, 1991), Appendix 1: Act and Instructions.

<sup>48</sup> U. Lundvik, *The Equal Opportunities Ombudsman: A Swedish Instrument to Promote Equality Between Women and Men on the Labour Market*, International Ombudsman Institute, Occasional Paper #29, May 1985, p. 5.

<sup>49</sup> P. Nobel, "Summary of a report on Sweden's Ombudsman against Ethnic Discrimination," in *Fifth International Ombudsman Conference* (Vienna: The Conference, 1992), No. 33.

<sup>50</sup> Caiden, "The Institution of the Ombudsman," p. 3.

<sup>51</sup> D. Rowat and G. Wallace, "The Campus Ombudsman in North America," in *International Handbook*, Vol. 1, p. 153.

- <sup>52</sup> S. Zagoria, *Press Ombudsmen*, International Ombudsman Institute, Occasional Paper #34, February 1986, pp. 2-4.
- <sup>53</sup> Murray Goldblatt, "The limits of ombudsmanship," *content* (August 1992): 25.
- <sup>54</sup> Rowat, "Reflections on the Ombudsman Concept," p. 30.
- <sup>55</sup> M. Zetlin, "A Neutral Third Party," *Management Review* (September 1992): 50.
- <sup>56</sup> L. Kines, "Company Ombudsmen Growing in Popularity," *Vancouver Sun*, 10 December 1991, p. 4.
- <sup>57</sup> R. James and M. Seneviratne, "The Building Societies Ombudsman Scheme," *Civil Justice Quarterly* (April 1992): 158.
- <sup>58</sup> R. Smith, "A Place of Last Resort," *New Law Journal* (1 November 1991): 1495.
- <sup>59</sup> H. Luntz, "The Australian Banking Industry Ombudsman," *Banking and Finance Law Review* 8 (1992-93): 71.
- <sup>60</sup> New Zealand, *Report of the Ombudsmen* (Wellington: Office of the Ombudsman, 1992), p. 37.
- <sup>61</sup> Australia, Commonwealth and Defence Force Ombudsman, *Annual Report, 1991-92* (Canberra: Australian Government Publishing Service, 1992), p. 4.
- <sup>62</sup> Commonwealth Secretariat, "Ombudsmen," *Commonwealth Law Bulletin* 19:3 (July 1993): 1129.
- <sup>63</sup> P.E. Morris, "The Banking Ombudsman - Five Years On," *Lloyd's Maritime and Commercial Law Quarterly* (May 1992): 227.
- <sup>64</sup> James and Seneviratne, "Building Societies," p. 164.
- <sup>65</sup> Luntz, "Australian Banking," p. 74.
- <sup>66</sup> John F. Robertson, New Zealand, Office of the Ombudsman, *Brief for the Committee on Institutions Examining the Mandate, Directions, Activities and Management of the Public Protector* (Wellington: Office of the Ombudsman, 1990), submitted to Committee on Institutions of the Quebec National Assembly, pp. 7-8.
- <sup>67</sup> See discussion in: Canberra, Senate Standing Committee on Finance and Public Administration, *Review of the Office of the Commonwealth Ombudsman* (Canberra: Australian Government Publishing Service, 1991), pp. 24-27.
- <sup>68</sup> Robertson, *Brief for the Committee on Institutions*, pp. 7-8.
- <sup>69</sup> Poole, "United Kingdom," p. 194 and Ontario, Legislative Assembly, Standing



Committee on the Ombudsman, *Review of the Office of the Ombudsman* (Toronto: The Committee, 1993), pp. 89-105.

<sup>70</sup> Office of the Ombudsman, New Brunswick, *Annual Report, 1990* (Fredericton: The Office, 1990), p. 26.

<sup>71</sup> John F. Robertson, Chief Ombudsman for New Zealand, 3 February 1993, letter to Paul Murray, Research Officer, Legislative Research Service.

<sup>72</sup> Saskatchewan and Quebec.

<sup>73</sup> Ontario Ombudsman, *Annual Report, 1990/91*, p. 41.

<sup>74</sup> The survey classified respondents as "more vulnerable" if any of the following conditions were met: the respondent said that he or she was a member of a racial minority; the respondent had come to Canada sometime in the last five years; the respondent was for health reasons limited in the things he/she can do on a day-to-day basis; the respondent was a single parent. See Ontario Ombudsman, *Annual Report, 1990/91*, p. 41.

<sup>75</sup> Ibid.

<sup>76</sup> Quebec, National Assembly, Committee on Institutions, *Review of the Term of Office, Objectives, Activities and Management of the Public Protector, Final Report* (Quebec: National Assembly, November 1991), pp. 10-12.

<sup>77</sup> Canberra, Senate Standing Committee, *Review*, pp. 74-76.

<sup>78</sup> Ontario, Standing Committee, *Review of the Office of the Ombudsman*, pp. 20-24.

<sup>79</sup> U. Kempf and M. Mille, "The Role and the Function of the Ombudsman: Personalized Parliamentary Control in 48 Different States," in *Fifth International Ombudsman Conference*, pp. 14-15.

<sup>80</sup> D. Pearce, "Ombudsman: Review and Preview," in *Fifth International Ombudsman Conference*, p. 16.

<sup>81</sup> New Zealand, *Ombudsmen Act 1975*, R.S. Vol. 21, ss. 16(1) and (1A).

<sup>82</sup> Ibid., s. 28A.

<sup>83</sup> New Zealand, *Report of the Ombudsmen*, 30 June 1992, pp. 36-37.

<sup>84</sup> Ibid.

<sup>85</sup> Quebec, Committee on Institutions, *Final Report*, p. 13.

<sup>86</sup> Australia, Commonwealth and Defence Force Ombudsman, *Annual Report, 1991-92*, p. 4.

- <sup>87</sup> Netherlands National Ombudsman, "The National Ombudsman of the Netherlands: A Brief Introduction," in *Fifth International Ombudsman Conference*, p. 25.
- <sup>88</sup> Quebec, Committee on Institutions, *Final Report*, p. 13.
- <sup>89</sup> New Zealand and Manitoba. See: Ontario, Standing Committee, *Review of the Office of the Ombudsman*, p. 18.
- <sup>90</sup> Quebec, Committee on Institutions, *Final Report*, p. 13.
- <sup>91</sup> Ontario Ombudsman, *Annual Report, 1991-92*, pp. 4-5.
- <sup>92</sup> Ontario, Standing Committee, *Review of the Office of the Ombudsman*, pp. 18-20.
- <sup>93</sup> Quebec, Committee on Institutions, *Final Report*, p. 22.
- <sup>94</sup> Robertson, *Brief for the Committee on Institutions*, p. 7.
- <sup>95</sup> Ontario Ombudsman, *Special Report of the Ombudsman Ontario following her investigation into the Ontario Human Rights Commission, the Complaint of Ms. R, and the Complaint of Ms. M* (Toronto: The Ombudsman, 1993).
- <sup>96</sup> Ontario, Standing Committee, *Report of the Review of the Office of the Ombudsman*, pp. 10-12.
- <sup>97</sup> Ontario Ombudsman, *Annual Report, 1991-92*, p. 6.
- <sup>98</sup> Rowat, "Reflections on the Ombudsman Concept," p. 29.
- <sup>99</sup> Canada, *Report of the Committee on the Concept of the Ombudsman*, p. 18.
- <sup>100</sup> Ontario Ombudsman, *Annual Report, 1991-92*, p. 6.
- <sup>101</sup> Ontario, Standing Committee, *Review of the Office of the Ombudsman*, pp. 49-52.
- <sup>102</sup> Ontario, Legislative Assembly, Standing Committee on the Ombudsman, *Expansion of Jurisdiction of the Office of the Ombudsman* (Toronto: The Committee, November 1989), p. 7.
- <sup>103</sup> Ontario, Standing Committee, *Review of the Office of the Ombudsman*, p. 52.
- <sup>104</sup> *Ibid.*, pp. 43-47.
- <sup>105</sup> Canberra, Senate Standing Committee, *Review of the Office of the Commonwealth Ombudsman*, pp. 61-62.
- <sup>106</sup> A. Maloney, Q.C., *Blueprint for the Office of the Ombudsman in Ontario* (Toronto: The Ombudsman, 1979), pp. 38-40.



- <sup>107</sup> Robertson, *Brief for the Committee on Institutions*, pp. 2-4.
- <sup>108</sup> *Ombudsman Act*, R.S.A., c. O-7, s. 10.1.
- <sup>109</sup> Quebec, Committee on Institutions, *Final Report*, pp. 5-7.
- <sup>110</sup> Saskatchewan, Office of the Ombudsman, *Report of the Ombudsman* (Saskatoon: The Office, 1988), p. 2.
- <sup>111</sup> Norman Geschke, Ombudsman, Victoria, Australia, letter to Quebec Public Protector, tabled with the Committee on Institutions, National Assembly, Quebec, 22 November 1990, p. 3.
- <sup>112</sup> Ontario, Standing Committee, *Review of the Office of the Ombudsman*, pp. 65-66.
- <sup>113</sup> New Zealand, *Report of the Ombudsmen*, June 1992, pp. 6-10.
- <sup>114</sup> Ontario, Standing Committee, *Review of the Office of the Ombudsman*, pp. 60-62.
- <sup>115</sup> *Ibid.*, pp. 74-78.
- <sup>116</sup> Kempf and Mille, "Role and Function of Ombudsman," p. 24.
- <sup>117</sup> *Ombudsman Act*, R.S.O. 1990, c. O-6, s. 4.





3 1761 11550136 3

